Sri Bangunan Sdn Bhd v Majlis Perbandaran Pulau Pinang & Anor

FEDERAL COURT (PUTRAJAYA) — CIVIL APPEAL NO 01–7 OF 2006(P)
NIK HASHIM, AUGUSTINE PAUL AND AZMEL FCJJ
27 AUGUST 2007

Statutory Interpretation — Construction of statutes — Purposive approach — Duty of court — Whether limited to interpreting words used by legislature and to give effect to words used by it

Statutory Interpretation — Construction of statutes — Purposive approach — Whether could resort to the purposive approach or the principle of casus omissus

The first respondent is a local authority incorporated under the Local Government Act 1976 and is the local planning authority for the island of Pulau Pinang pursuant to the Town and Country Planning Act 1976 ('the Act'). The second respondent is constituted under s 36 of the Act to hear appeals pursuant to s 23 of the Act against decisions of the local planning authority made under s 22(3) of the Act. The appellant is a developer. The appellant made an application for planning permission for development, namely the demolition of the existing building known as No 457 Jalan Burma ('the building') on Lot No 2334, section 1 George Town, North East District, Pulau Pinang (the land) and for the erection of 20-storey service apartment on the land. The first respondent, however, vide its letter dated 18 November 1996, directed the appellant to amend the plan accordingly in order to comply with the decision of the first respondent made on 14 October 1996 directing the appellant to preserve the building and to erect its proposed building in the vicinity of the building. The appellant appealed to the second respondent against the direction of the first respondent under s 23 of the Act for refusing to reconsider its decision to impose the direction and directing the appellant to comply with the said requirement. During the hearing of the appeal before the second respondent, the first respondent raised a preliminary objection that the direction was not appealable under s 23 of the Act. The second respondent overruled the preliminary objection and also held that the first respondent had no powers to issue the direction. The first respondent's application for judicial review by way of a writ of certiorari to quash the decision of the second respondent was dismissed with costs by the High Court. The first respondent's appeal to the Court of Appeal against the decision of the High Court was allowed by the Court of Appeal. The Federal Court granted leave to appeal on the following question: 'whether a direction given by a local authority under s 21(3)(g) of the Town and Country Planning Act 1976 to an applicant for planning permission under the said Act is a 'decision' which is appealable under s 23 of the said Act.'

Held, dismissing the appeal:

(1) It is common ground that the direction was given under s 21(3)(g) of the Act. In construing a statute the duty of the court is limited to interpreting the words used by the legislature and to give effect to the words used by it. The court is not entitled to read words into a statue unless clear reason for it is to be found in the statute itself (see paras 16 & 18).

(2) To accede to the interpretation contended by the appellant that written directions issued by a local planning authority pursuant to s 21(3)(g) of the Act can be made the subject of an appeal under s 23 of the Act would tantamount to reading into the section words which are not there, and in the absence of clear necessity it is indeed a wrong thing to do (see para 22).

(3) An appealable decision under s 23 of the Act would be one granting or refusing planning permission or granting planning permission subject to a disputed condition (see para 27).

(4) The appellant could not by resorting to the purposive approach or the principle of *casus omissus* to legitimize its appeal to the second respondent under s 23 of the Act when the express provisions of the said s 23 read together with s 22(3) and (6) of the Act and r 10 of the Planning Control (General) Rules 1990 do not permit this. It is evidently clear from their provisions that the intention of the legislature was only to provide for an appeal to the second respondent against a refusal to grant planning permission or the grant of planning permission subject to a disputed condition and not in any circumstances (see para 28).

[Bahasa Malaysia summary

Responden pertama adalah pihak berkuasa tempatan yang ditubuhkan di bawah Akta Kerajaan Tempatan 1976 dan adalah pihak berkuasa perancangan tempatan untuk Pulau Pinang menurut Akta Perancangan Bandar dan Desa 1976 ('Akta tersebut'). Responden kedua dibentuk di bawah s 36 Akta tersebut untuk mendengar rayuan-rayuan menurut s 23 Akta tersebut terhadap keputusan-keputusan pihak berkuasa perancangan tempatan yang dibuat di bawah s 22(3) Akta tersebut. Perayu adalah pemaju. Perayu telah membuat satu permohonan untuk kebenaran perancangan untuk pembangunan, iaitu untuk meruntuhkan bangunan sedia ada dikenali sebagai No 457 Jalan Burma ('bangunan tersebut') di Lot No 2334, seksyen 1, George Town, Daerah Timur Utara, Pulau Pinang ('tanah tersebut') dan untuk membina apartmen perkhidmatan 20 tingkat atas tanah tersebut. Responden pertama, bagaimanapun, melalui suratnya bertarikh 18 November 1996, telah mengarahkan perayu meminda pelan tersebut agar mematuhi keputusan responden pertama yang dibuat pada 14 Oktober 1996 yang mengarahkan perayu mengekalkan bangunan tersebut dan membina bangunan cadangannya dalam kawasan bangunan tersebut. Perayu telah perayu kepada responden kedua terhadap arahan responden pertama di bawah s 23 Akta tersebut kerana enggan mempertimbangkan semula keputusannya untuk mengenakan arahan tersebut dan mengarahkan perayu mematuhi keperluan tersebut. Semasa perbicaraan rayuan tersebut di hadapan responden kedua, responden pertama telah menimbulkan bantahan awal bahawa arahan tersebut tidak oleh dirayu di bawah s 23 Akta tersebut.

Responden kedua telah menolak bantahan awal tersebut dan juga memutuskan bahawa responden pertama tiada kuasa untuk mengeluarkan arahan tersebut. Permohonan responden pertama untuk semakan kehakiman melalui satu writ certiorari untuk membatalkan keputusan responden kedua telah ditolak dengan kos oleh Mahkamah Tinggi. Rayuan responden pertama ke Mahkamah Rayuan terhadap keputusan Mahkamah Tinggi telah dibenarkan oleh Mahkamah Rayuan. Mahkamah Persekutuan memberikan kebenaran untuk merayu berhubung persoalan berikut: 'whether a direction given by a local authority under s 21(3)(g) of the Town and Country Planning Act 1976 to an applicant for planning permission under the said Act is a 'decision' which is appealable under s 23 of the said Act.'

Diputuskan, menolak rayuan tersebut:

(1) Adalah alasan biasa bahawa arahan tersebut diberikan di bawah s 21(3) Akta tersebut. Dalam mentafsirkan suatu statut tugas mahkamah adalah terbatas kepada mentafsirkan perkataan-perkataan yang digunakan oleh badang perundangan dan untuk memberi kesan kepada perkataan-perkataan yang digunakan. Mahkamah tidak berhak untuk mentafsirkan perkataan-perkataan dalam statut tersebut kecuali terdapat alasan jelas untuknya terkandung dalam statut tersebut (lihat perenggan 16 & 18).

(2) Untuk bersetuju dengan tafsiran yang dihujahkan oleh perayu bahawa arahan bertulis yang dikeluarkan oleh pihak berkuasa perancangan tempatan menurut s 21(3)(g) Akta tersebut boleh dijadikan subjek rayuan di bawah s 23 Akta tersebut adalah sama seperti membaca ke dalam seksyen perkataan-perkataan yang tiada di situ, dan dalam ketiadaan suatu keperluan yang nyata ianya adalah suatu yang salah untuk dilakukan (lihat perenggan 22).

(3) Satu keputusan yang boleh dirayu di bawah s 23 Akta tersebut adalah satu yang memberikan atau menolak kebenaran perancangan atau memberikan kebenaran perancangan tertakluk kepada syarat yang dipertikaikan (lihat perenggan 27).

(4) Perayu tidak boleh dengan menggunakan pendekatan bermaksud atau prinsip *casus omissus* untuk mengesahkan rayuannya kepada responden kedua di bawah s 23 Akta tersebut apabila peruntukan nyata s 23 dibaca bersama s 22(3) dan (6) Akta tersebut dan k 10 Kaedah-Kaedah Kawalan Perancangan (Am) 1990 tersebut tidak membenarkan berbuat demikian. Adalah jelas daripada peruntukan tersebut bahawa niat badan perundangan adalah hanya untuk memberikan rayuan kepada responden kedua terhadap penolakan satu pemberian kebenaran perancangan atau pemberian kebenaran perancangan tertakluk kepada syarat yang dipertikaikan dan bukan dalam apa-apa keadaan (lihat perenggan 28).]

Notes

For cases on purposive approach, see 11 *Mallal's Digest* (4th Ed, 2005 Reissue) paras 1952–2009

Cases referred to

Majlis Perbandaran Pulau Pinang v Lembaga Rayuan Negeri Pulau Pinang & Anor [1999] 1 AMR 509 (refd)

Majlis Perbandaran Pulau Pinang v Syarikat Bekerjasama-sama Serbaguna Sungai Gelugor Dengan Tanggungan [1999] 3 MLJ 1 (refd)

Metramac Corp Sdn Bhd v Fawziah Holdings Sdn Bhd [2006] 4 MLJ 113 (refd)

NKM Holdings Sdn Bhd v Pan Malaysia Wood Bhd [1987] 1 MLJ 39 (refd)

Syarikat Bekerjasama-sama Serbaguna Sungai Gelugor Dengan Tanggungan v Majlis Perbandaran Pulau Pinang [1996] 2 MLJ 69 (refd)

Vengadasalam v Khor Soon Weng & Ors [1985] 2 MLJ 449 (refd)

Legislation referred to

Local Government Act 1976
Planning Control (General) Rules 1990 r 10
Town and Country Planning Act 1976 ss 21(3)(g), (5), 22(3), (6), 23, 24(5), 36

Appeal from: Civil Appeal No P–01–45 of 2002 (Court of Appeal, Putrajaya)

Nik Hashim FCJ (delivering judgment of the court):

THE QUESTION

[1] On 24 July 2006, this court granted leave to appeal on the following question:

> Whether a direction given by a local authority under s 21(3)(g) of the Town and Country Planning Act 1976 to an applicant for planning permission under the said Act is a 'decision' which is appealable under s 23 of the said Act.

BACKGROUND

[2] The first respondent is a local authority incorporated under the Local Government Act 1976 and is the local planning authority for the island of Pulau Pinang pursuant to the Town and Country Planning Act 1976 ('the Act').

[3] The second respondent, Lembaga Rayuan Negeri Pulau Pinang, is constituted under s 36 of the Act to hear appeals pursuant to s 22(3) of the Act against decisions of the local planning authority made under s 23 of the Act.

[4] The appellant is a developer.

[5] The facts are that on 30 December 1993, the appellant made an application for planning permission for development, namely the demolition of the existing building known as No 457 Jalan Burma ('the building') on Lot No 2334, section 1 George Town, North East District, Pulau Pinang ('the land') and for the erection of 20-storey service apartment on the land.

[6] By a letter dated 26 April 1994, the first respondent directed the appellant pursuant to s 21(3)(g) of the Act to amend the plans submitted together with its application in accordance with the list of 16 requirements and comments of the relevant departments and to resubmit the amended plans within three months failing which the application was deemed to have been withdrawn. However, under s 21(5) of the Act the appellant may submit a fresh application.

[7] The requirement No 16 ('the direction') was as follows:

> Adalah diperakukan bangunan sediada yang menarik dikekalkan dan pemajuan baru direkabentuk di sekeliling bangunan ini.

[8] By a letter dated 21 February 1995 and after the expiry of the stipulated period of three months the appellant's architect returned to the first respondent the amended layout plans ('the plan') for its further consideration and approval together with a fresh proposal for the demolition of the building and for the erection of a 24-storey building on the land.

[9] The first respondent, however, vide its letter dated 18 November 1996, directed the appellant to amend the plan accordingly in order to comply with the decision of the first respondent made on 14 October 1996 directing the appellant to preserve the building and to erect its proposed building in the vicinity of the building. The appellant was also required to resubmit the amended plan within two months. The above letter containing the direction reads as follows:

> Ruj. tuan: JPB/PM/1630
>
> Ruj. Kami:
>
> Tarikh: 18 Nov 1996
>
> M/s Sri Bangunan Sdn Bhd
>
> 14A Lebuh Chulia
>
> 10200 Pulau Pinang
>
> Tuan,
>
> JPB/PM/1630 – PERMOHONAN KEBENARAN MERANCANG UNTUK MENDIRIKAN BANGUNAN 24 TINGKAT DAN BASEMEN YANG MENGANDUNGI 60 UNIT PANGSAPURI, PEJABAT, RESTORAN DAN TEMPAT LETAK KERETA DI ATAS LOT 2334, SEK. 1, BANDAR GEORGE TOWN, DTL., JALAN BURMA, PULAU PINANG UNTUK M/S SRI BANGUNAN SDN. BHD.
> ---
>
> Saya adalah diarah merujuk kepada permohonan tersebut di atas dan ingin memberitahu bahawa Majlis pada 14.10.96 telah memutuskan supaya:
>
> i) permohonan perlingkungan semula dari 'pelajaran' kepada 'perdagangan' adalah diperakukan tetapi Bangunan No 457 Jalan Burma hendaklah dikekalkan. Pemaju boleh membina di tepi bangunan sediada. Walau bagaimanapun, sekiranya pemaju ingin merobohkan bangunan sediada, mereka perlu menunggu siapnya kajian bangunan-bangunan warisan di Pulau Pinang oleh Jawatankuasa Pemeliharaan di peringkat Negeri.

2. Sila ambil tindakan yang sewajarnya untuk meminda pelan supaya mematuhi arahan-arahan Majlis dan mengemukakan semula pelan tersebut dalam tempoh 2 bulan dari tarikh surat ini untuk dipertimbangkan selanjutnya oleh Majlis.

3. Sekiranya permohonan tidak dikemukakan dalam tempoh tersebut tuan akan dianggap tidak berminat lagi untuk meneruskan permohonan ini dan permohonan akan disifatkan sebagai ditarikbalik.

"BERKHIDMAT UNTUK NEGARA"

Saya yang menurut perintah,

tt

(TAN THEAN SIEW)

b/p SETIAUSAHA

MAJLIS PERBANDARAN PULAU PINANG

sk Arkitek Tan Jeng Song 58-4-1, Fortune Heights Jalan Cantonment 10250 Pulau Pinang.

[10] On 17 December 1996, the appellant appealed to the second respondent against the direction of the first respondent under s 23 of the Act for refusing to reconsider its decision to impose the direction and directing the appellant to comply with the said requirement.

FINDING OF THE APPEAL BOARD

[11] During the hearing of the appeal before the second respondent, the first respondent raised a preliminary objection that the direction was not appealable under s 23 of the Act. The second respondent however, overruled the preliminary objection and also held that the first respondent had no powers to issue the direction. The Appeal Board said at p 313 of the appeal record as follows:

> However, s 23(1) cannot be read ad litteram and in isolation; that would only produce the absurd result that an applicant cannot appeal and is without a recourse against a direction that is unreasonable, unlawful and or beyond the scope and ambit of the Act.

And the Appeal Board at p 317 continued:

> Even said beforehand, s 23(1) cannot be ad litteram. It must be read within the context of the Act read as a whole. Its meaning must be ascertained noscitur a sociis by reference to associated words and associated provisions and the sense within the context of the Act as a whole. And s 23(1) read within the context of the Act as a whole, surely provides, and this construction is entirely in accord with the objects of the Act, that an applicant may appeal against the decision (the word is used in the popular and not legal sense) of the local planning authority on the directions/conditions or refusal of planning permission in relation to an application for planning permission.

FINDING OF THE HIGH COURT

[12] The first respondent's application for judicial review by way of a writ of certiorari to quash the decision of the second respondent was dismissed with costs by

the High Court Pulau Pinang on 4 July 2002 and in doing so ruled that the direction was ultra vires the Act. The High Court in its grounds of judgment at p 48 of the appeal record opined:

> I take the view that the decision referred to in section 23 of the Act must of necessity be taken to include any direction or ruling made by the applicant in relation to any matter that concerns that application for planning permission made pursuant to s 21(1) of the TCPA (the Act). I hold that the words 'written directions' in s 21(3) must by reason of legislative framework considerations be taken also to mean a decision of the local planning authority as provided under s 23(1). A written direction is also a decision.

And at pp 52 and 53 the High Court ruled:

> It is my judgment that the problem in this case is one of casus omissus rather than one of being precise and unambiguous. It is regrettable that the TCPA has not provided for a situation where an applicant for planning permission is aggrieved by the imposition of a condition by way of written directions given pursuant to s 21(3) of the TCPA.
>
> The TCPA is both a consolidating as well as a comprehensive act in respect of planning law in this country. The fact that s 36 provides for the establishment of an Appeal Board is sufficient to suggest that aggrieved parties involved in the process of planning should be given the right of an appeal. If, as suggested by the applicant, the literal approach is to be adopted then quite clearly it could result in an oppressive and capricious situation where a local planning authority for any one of several reasons could impose intolerable and improper written directions and an aggrieved applicant will not have any recourse to a remedy or an appeal.

FINDING OF THE COURT OF APPEAL

[13] The first respondent's appeal to the Court of Appeal against the decision of the High Court was, however, allowed by the Court of Appeal on 24 November 2004. The relevant part of the judgment of Gopal Sri Ram JCA at pp327 and 328 reads as follows:

> 8 It would appear that the High Court found against the appellant principally on the ground that there was a hiatus in s 23(1) of the Act. With respect I disagree. The section has been purposely cast in the way it has to avoid the first respondent being bogged down with appeals against all the directions which the appellant has to give in the course of carrying out its business. If Parliament intended for there to be a right of appeal against decisions made or directions given under other provisions of the Act it would have said so expressly. It is no function of a court, save in very exceptional circumstances as were present in *Chellapah v Malayan Railway Administration* [1948–49] MLJ Supp 173, to supply omissions in a statute. In my respectful judgment, the High Court in the present case embarked upon an exercise of unauthorized legislation. I think that the High Court was concerned that someone in the position of the second respondent would be remediless if there was no provision for an appeal. This is an error. Decisions, directions, acts and omissions of the appellant falling outside the immediate scope of s 23(1) of the Act may be made the subject matter of judicial review in the ordinary way. So, the second respondent was not without recourse. In the present case it should have sought judicial review and not proceeded by way of appeal.

FINDING OF THIS COURT

[14] Since the interpretation of certain provisions in the Act are crucial in arriving at a decision in this appeal, the relevant provisions are reproduced below:

21 Application for planning permission

(1) An application for planning permission in respect of a development shall be made to the local planning authority and shall be in such form and shall contain such particulars and be accompanied by such documents, plans, and fees as may be prescribed.

(2) ...

(3) Where the development involves the erection of a building, the local planning authority may give *written directions* to the applicant in respect of any of the following matters, that is to say —

(a) the level of the site of the building;

(b) the line of frontage with neighbouring buildings;

(c) the elevations of the building;

(d) the class, design, and appearance of the building;

(e) the setting back of the building to a building line;

(f) access to the land on which the building is to be erected; and

(g) *any other matter that the local planning authority considers necessary for purposes of planning.*

(4) The applicant to whom any written directions are given under subsection (3) shall amend the plan submitted with his application accordingly and resubmit the plan within such period or extended period as the local planning authority may specify.

(5) If the plan is not resubmitted within the specified period or extended period, the application for planning permission shall be deemed to have been withdrawn but the applicant may submit a fresh application.

(6) ...

(7) ...

22 Treatment of applications

(1) ...

(2) In dealing with an application for planning permission, the local planning authority shall take into consideration such matters as are in its opinion expedient or necessary for proper planning and in particular —

(a) the provisions of the development plan, if any;

(b) the provisions that it thinks are likely to be made in any development plan under preparation or to be prepared, or the proposals relating to those provisions;

(ba) the provisions of the Sewerage Services Act 1993 [Act 508];

(bb) the development proposal report; and

(c) the objection, if any, made under section 21.

(3) After taking into consideration the matters specified in subsection (2), the local planning authority may, subject to subsection (4), grant planning permission either absolutely or subject to such conditions as it thinks fit to impose, or refuse to grant planning permission.

A (4) ...

(5) ...

(5A) ...

(6) If planning permission is granted, whether with or without conditions, it shall be conveyed to the applicant in the prescribed form and at the same time a notice of the
B grant thereof shall be given to any person who has made any objection pursuant to subsection 21(6).

23 Appeal against decision of local planning authority

(1) An appeal against the decision of the local planning authority made under subsection 22(3) may be made to the Appeal Board within one month from the date of the
C communication of such decision to him, by —

(a) an applicant for planning permission aggrieved by the decision of the local planning authority to refuse planning permission or by any condition imposed by the local planning authority in granting planning permission; and

(b) a person who has lodged an objection pursuant to subsection 21(6) and is aggrieved
D by the decision of the local planning authority in relation to his objection.

(2) ...

(3) ...

(Emphasis added.)

E

[15] According to s 22(6) of the Act a decision granting planning permission with or without conditions shall be conveyed to the applicant in the prescribed form. The relevant forms are prescribed under r 10 of the Planning Control (General) Rules 1990 ('the Rules') which states:

F

10(1) A planning permission shall be in Form C(1) of the First Schedule.

(2) A refusal to grant planning permission shall be in Form C(2) of the First Schedule.

Form C(1):

G

FORM C(1) PLANNING PERMISSION (Rule 10(1)) pursuant to Section 22(3) of the Town and Country Planning Act 1976

Reference Number ……

By virtue of subsection 3 of section 22 of the Town and Country Planning Act 1976,
H planning permission is hereby granted to ……..... (name of applicant) of …….. (Address) ……. for the purpose of ……..…….. ……..…….. (State nature of development) as shown in the attached plan on lot No. …..…… in the Mukim/Town Section of ……... in the District/Town of ……

I The grant of planning permission is subject to the following conditions: ……..
……..
……..

Date.....

SEAL..... A

Authorized Officer

Form C(2):

FORM C(2) REFUSAL OF PLANNING PERMISSION (Rule 10(2)) pursuant to Section 22(3) of the Town and Country Planning Act 1976 B

To:

.....

.....

..... C

The …… (Name of Local Planning Authority) after dealing with your application and taking into consideration matters that are required by law has decided not to grant planning permission to …….. …….. of …… (Name of Applicant) (Address) …… for the purpose of ……. …… (State nature of development) …… on Lot No. in the Mukim/Town Section of ……... in the District/Town of …… D

The local planning authority has decided not to grant planning permission for the following reasons: E

……..
……..
……..
……..

F

Date ……

SEAL ……. Authorized Officer

[16] It is common ground that the direction was given under s 21(3)(g) of the Act. G

[17] The appellant in this appeal is urging this Court to uphold the decision of the High Court by adopting the purposive approach in interpretation of the Act and by resorting to the principle of 'causus omissus' in view of the fact that Parliament has not provided for a situation where an applicant for planning permission is dissatisfied with a written direction or condition imposed by a local planning authority pursuant to s 21(3) of the Act. H

[18] In construing a statute the duty of the Court is limited to interpreting the words used by the legislature and to give effect to the words used by it. The Court is not entitled to read words into a statute unless clear reason for it is to be found in the statute itself. I

[19] In *NKM Holdings Sdn Bhd v Pan Malaysia Wood Bhd* [1987] 1 MLJ 39 Seah SCJ delivering the judgment of the then Supreme Court reminded at pp 22 and 23:

It must always be borne in mind that we are judges, not legislators. The constitutional function of the courts is not only to interpret but also to enforce the laws enacted by Parliament. In enforcing the law we must be the first to obey it. It should be noted that the power of a court to proceed in a particular course of administering justice, was one of substance and not merely of form. The duty of the court, and its only duty, is to expound the language of Act in accordance with the settled rules of construction. The court has nothing to do with the policy of any Act which it may be called upon to interpret. That may be a matter for private judgment. It seems to us to be unwise as it is unprofitable to cavil at the policy of an Act of Parliament, or to pass a court censure on the Legislature (see Lord Chelmsford in *R v Hughes* and Lord Macnaghten in *Vacher & Sons v London Society of Compositors*).

[20] The case of *NKM Holdings Sdn. Bhd* was referred to by my learned brother Augustine Paul FCJ in the recent case of *Metramac Corp Sdn Bhd v Fawziah Holdings Sdn Bhd* [2006] 4 MLJ 113 where he said at p 129:

> Thus when the language used in a statute is clear effect must be given to it. As Higgins J said in *Amalgamated Society of Engineers v Adelaide Steamship Co Ltd* (1920) 28 CLR 129 at pp 161–162:
>
> > The fundamental rule of interpretation, to which all others are subordinate, is that a statute is to be expounded according to the intent of the Parliament that made it, and that intention has to be found by an examination of the language used in the statute as a whole. The question is, what does the language mean; and when we find what the language means in its ordinary and natural sense it is our duty to obey that meaning even if we think the result to be inconvenient, impolite or improbable.
>
> The primary duty of the court is to give effect to the intention of the Legislature as expressed in the words used by it and no outside consideration can be called in aid to find another intention (see *Nathu Prasad v Singhai Kepurchand* 1976 Jab LJ 340). Thus the duty of the court, and its only duty, is to expound the language of a statute in accordance with the settled rules of construction and has nothing to do with the policy of any statute which it may be called upon to interpret (see *Vacher & Sons Ltd v London Society of Compositors* [1913] AC 117; *NKM Holdings Sdn Bhd v Pan Malaysia Wood Bhd* [1987] 1 MLJ 39).

[21] In *Vengadasalam v Khor Soon Weng & Ors* [1985] 2 MLJ 449 at p 450 Abdoolcader SCJ said:

> We would in this regard also advert to the decision of the House of Lords in *Thompson v Goold & Co* where Lord Mersey said in his speech (at p 420): 'It is a strong thing to read into an Act of Parliament words which are not there, and in the absence of clear necessity it is a wrong thing to do.' Even more pertinent perhaps would be the speech of Lord Loreburn, LC in *Vickers, Sons and Maxim, Limited v Evans* when he said (at p 445):
>
> > My Lords, this appeal may serve to remind us of a truth sometimes forgotten, that this House sitting judicially does not sit for the purpose of hearing appeals against Acts of Parliament, or of providing by judicial construction what ought to be in an Act, but simply of construing what the Act says. We are considering here not what the Act ought to have said, but what it does say; ……. The appellant's contention involves reading

words into this clause. The clause does not contain them; and we are not entitled to read words into an Act of Parliament unless clear reason for it is to be found within the four corners of the Act itself.

[22] Thus, to accede to the interpretation contended by the appellant that written directions issued by a local planning authority pursuant to s 21(3)(g) of the Act can be made the subject of an appeal under s 23 of the Act would tantamount to reading into the section words which are not there, and in the absence of clear necessity it is indeed a wrong thing to do.

[23] We agree with the Court of Appeal that the position in the present case is analogous to that obtained in *Majlis Perbandaran Pulau Pinang v Syarikat Bekerjasama-sama Sungai Gelugor Dengan Tanggungan* [1999] 3 MLJ 1 (FC) wherein it was held that an appealable decision under s 23 of the Act would be one granting or refusing planning permission or granting planning permission subject to a disputed condition.

[24] In *Sungai Gelugor*, the applicant was granted planning permission for the construction of a 10-storey low cost flats on 6 September 1991. When the planning permission expired, the applicant applied for an extension of the planning permission. On 20 July 1993 the local planning authority (the respondent) agreed to grant the extension subject to the additional condition that 30% of the units built must be sold at RM25,000 per unit (the disputed condition). The applicant by a letter dated 10 August 1993 appealed to the respondent urging the respondent to review the disputed condition. On 20 September 1993 the respondent refused the request for review and thereupon the applicant applied for leave to issue a writ of certiorari to quash the decision of the respondent made on 20 September 1993. The judge of first instance dismissed the application on the ground that an alternative remedy was available and that the applicant's failure to first appeal under s 23 of the Act was fatal. The applicant appealed to the Supreme Court which set aside the High Court decision and gave leave to apply for certiorari and ordered the substantive motion to be heard by another judge. The second judge dismissed the substantive motion on the same ground as that by the first judge that an alternative remedy was available. The applicant appealed to the Court of Appeal (see *Syarikat Bekerjasama-sama Serbaguna Sungai Gelugor v Majlis Perbandaran Pulau Pinang* [1996] 2 MLJ 69 7) which held at p731 of the report that the respondent's decision rejecting the applicant's appeal for review of the disputed condition 'was not made under s 22(3) read together with s 24(5) of the Act and was therefore not an appealable matter under s 23. By this quirk of events, the appellant had no domestic remedy left and judicial review was the only way to go.' Edgar Joseph Jr FCJ in affirming the decision of the Court of Appeal on this point said at pp 34–35 of the report:

Dr Das, for the Council, submitted that the Society's letter dated 10 August 1993 praying for a review of the Council's decision imposing the disputed decision was not an appeal under s 23, read with s 24(5) of the Act, to the Appeal Board constituted under s 36, and indeed, Mr Sethu for the Society himself submitted that the refusal by the Council to reconsider its decision to impose the disputed condition was not appealable under s 23, read

with s 24(3) of the Act which provides that an appealable decision would be one granting or refusing planning permission or imposing a disputed condition. In our view, both these submissions by Dr Das and Mr Sethu are plainly correct.

[25] See also the case of *Majlis Perbandaran Pulau Pinang v Lembaga Rayuan Negeri Pulau Pinang & Anor* [1999] 1 AMR 509 where Abdul Hamid Mohamad J (as he then was) following the decision of the Court of Appeal in *Sungai Gelugor* ruled that the imposition of development charge by the Majlis was not appealable under s 23 of the Act.

[26] In the present case there was a direction by the first respondent in its letter dated 18 November 1996 to the appellant directing the appellant to amend the plan. Instead of complying with the direction, the appellant appealed to the second respondent. This amounts to failure to resubmit the plan as directed. Therefore, pursuant to s 21(5) of the Act the application for the planning permission is deemed to be withdrawn. The question of an appealable decision having being made by the first respondent does not arise.

[27] Be that as it may, the appellant's notice of appeal dated 17 December 1996 to the second respondent was an appeal against the 14 October 1996 decision of the first respondent refusing to consider its decision to impose the direction and directing the appellant to comply with it. We agree with the first respondent that only a decision made under s 22(3) of the Act can be made the subject of an appeal under s 23 of the Act. In other words, an appealable decision would be one granting or refusing planning permission or imposing a disputed condition.

[28] Moreover, the decision of the first respondent made on 14 October 1996 contained in the letter dated 18 November 1996 is neither in Form C(1) nor Form C(2) to the Rules. The appellant cannot by resorting to the purposive approach or the principle of casus omissus to legitimize its appeal to the second respondent under s 23 of the Act when the express provisions of the said s 23 read together with s 22(3) and 22(6) of the Act and r 10 of the Rules do not permit this. It is evidently clear from their provisions that the intention of the legislature was only to provide for an appeal to the second respondent against a refusal to grant planning permission or the grant of planning permission subject to a disputed condition and not in any circumstances. Thus, we find that the reasoning of both the second respondent and the High Court untenable and contrary to all established principles and authorities on statutory interpretation. Hence, our answer to the question is in the negative.

[29] We would like to mention that the appellant in its submission also touched on other issues such as procedural unfairness, the direction being ultra vires the Act and the failure by the Court of Appeal to mould the relief in its favour. We have considered them. However, we are of the view that they are irrelevant to the question which this Court is called upon to answer in the appeal.

[30] Accordingly, we dismiss the appeal with costs and order that the deposit be paid to the respondents to account of their taxed costs.

Appeal dismissed.

Reported by Brendan Navin Siva